THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 4914 of 2007

DATED: 12-03-2007

Between:

P. Kanaka Durga Raju

…Petitioner.

and

Punjab National Bank, Zonal Office,
6-1-73, Saeed Plaza, Lakdikapul, Hyderabad represented by Authorized Officer.

…Respondent.

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 4914 of 2007

ORDER:

The sale notice dated 02.03.2007, published in the Hindu English Daily on 03.03.2007, is impeached in this writ petition.

Petitioner is the principal borrower from the respondent-banking institution. He defaulted on the repayment of the debt. The loan account was classified as a non-performing asset under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') duly. A notice under Section 13 (2) of the Act was issued on 12.10.2004 intimating the petitioner as to his outstanding liability in an amount of Rs.6,02,098.49 ps. There being no response, the property was taken possession of on 01.12.2006 under Section 13 (4) and 14 of the Act. Earlier, on 27.12.2006, the petitioner was issued a notice proposing sale of the secured asset. Apart from a notice to the petitioner as required under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules'), the sale proposal was also published in the daily newspapers on 29.12.2006. It would appear that the sale, as proposed by the earlier notice dated 27.12.2006, was cancelled due to administrative exigencies.

On 02.03.2007, the respondent-bank issued a notice to the petitioner, drawing attention of the petitioner to the earlier letter dated 27.12.2006 proposing sale of the secured asset and intimating that it is now again proposed to sell the secured assets through public auction, for recovery of the respondent's dues, on 13.03.2007, on the same terms and conditions as

specified in the earlier sale proclamation dated 27.12.2006. This notice to the petitioner was followed up by a publication, on 03.03.2007, of a notification dated 02.03.2007 proposing the sale on 13.03.2007.

The petitioner assails the sale proclamation on the ground that the proclamation transgresses the provisions of Rule 8 (6) read with Rule 9 of the Rules. Rule 8 sets out the statutory guidelines for the sale of immovable secured assets. This Rule is intended to effectuate the legislative purposes of Section 13 (4) of the Act. Sub Rules 1 to 4 of Rule 8 deal with the aspects relating to taking possession of the secured asset and its custody and preservation on such possession, pursuant to an exercise under Section 13 (4) or 14 of the Act. Rule 8 (5) of the Rules requires the authorized officer to obtain valuation of the property before effecting sale of the immovable property concerned, to fix the reserve price, and accords liberty to sell the whole or any part of the immovable secured asset by the specified methods which include inviting tenders from the public or holding a public auction. Rule 8 (6) of the Rules mandates the authorized officer to serve, on the borrower, a notice of thirty days for sale of the immovable secured assets. The proviso to Rule 8 (6) is to the effect that, if the sale of the secured asset is effected by either inviting tenders from the public or by holding a public auction, the secured creditor must cause a public notice in two leading newspapers, one in the vernacular language, having sufficient circulation in the locality setting out the terms of sale as specified in the Rule. Rule 8 (7) of the Rules deals with affixture of the notice of sale. Rule 9 of the Rules mandates that no sale of immovable property under the Rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers, as referred to in Rule 8 (6) proviso, or the notice of sale has been served on the borrower.

Defending the impugned sale publication, the learned counsel for the respondent-bank would contend that as the earlier sale notification was issued on 27.12.2006, duly granting sufficient time as mandated by Rule 8 read with Rule 9 of the Rules, and as that sale could not conclude to fruition, the present sale notification has again been published. Due notice has been

served on the borrower, the petitioner. As there was thirty days period before the date stipulated for sale in the earlier notification dated 27.12.2006, there is no necessity for the present publication of sale to incorporate a thirty days period for scheduling the date of sale, is the substantive contention on behalf of the respondent-bank.

The above contention does not commend acceptance by this Court. The legislative thrust and purpose of the provisions of the Rules 8 and 9 are many. At one level, the purpose is to sensitize the borrower of an impending sale, which is the culmination of the stringent measures of the legislation, so as to afford the borrower a final opportunity to redeem his property by repaying the debt. Rule 8 (6) and Rule 9 of the Rules, in particular, serve other purposes as well. It is specifically provided that where the sale of the secured asset is effected either by inviting tenders from the public or by holding a public auction (Rule 8 (6) proviso), the creditor must cause a public notice in two leading newspapers including one in the vernacular language having sufficient circulation in the locality. Coupled with the specific provisions of Rule 9 of the Rules, the statutory intent is that no sale of immovable property should take place before the expiry of thirty days from the date on which the public notice of sale is published in the newspapers. On an interactive analysis of Rules 8 (6) and 9 of the Rules, the legislative purpose is discernable and clear. The statutory rule requires that there should be a sufficiently transparent and widely publicized process for sale of the property in question, so as to ensure wider public participation, to enable a competitive return for the secured asset. The underlying purpose appears to be to provide a check for any irrational, incompetent, collusive or nepotistic practices by the human component of a banking or financial institution in effecting sales by invitation of tenders in public auction without following such mandated period of notice and publication of the event of sale. Without such wider publicity and following the rigorous procedure mandated by the statutory provision, both the borrower and the secured creditor might stand to lose. At least, these twin objectives substrate the statutory prescription of Rule 8 (6) proviso and Rule 9 of the Rules. Having

regard to the impregnated public interest trajectory of these Rules, this Court is of the considered view that the provisions must be interpreted as mandatory being in the public interest.

The mere fact that the earlier sale process activated by the notification dated 27.12.2006 was aborted by the respondent-bank for administrative exigencies, the present sale notification, dated 02.03.2007, cannot be considered in continuation of the earlier process, so as to whittle down the rigour and salutary purposes of Rule 8 (6) proviso read with Rule 9 of the Rules. The present notification dated 02.03.2007, published in the daily newspapers on 03.03.2007, is a *de novo* process of sale in text and substance. This sale notification must also conform to the rigour of the mandate of the proviso to Rule 8 (6) read with Rule 9 of the Rules.

The sale notification impugned in this writ petition does not conform to the mandate of the aforementioned statutory provisions. The sale proclamation must therefore perish.

The writ petition is, accordingly, allowed at the stage of admission, after hearing Mr. J. Raghu, the learned counsel for the petitioner, and Mr. Akula Satyanarayana, the learned standing counsel for the respondent-bank. The counsel have agreed that the writ petition be disposed of at the stage of admission. The respondent-bank is, however, at liberty to proceed with the issuance of a proclamation of sale in accordance with the mandate of the Rules and the provisions of the Act.

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GODA RAGHURAM, J

12th March, 2007.

Note:-

Issue order copy
as soon as possible.

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